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1 2	BEFORE THE FEDERAL ELECTION COMMISSION
2 3 4 5 6	In the Matter of) MUR 7431) CASE CLOSURE UNDER THE Honolulu Civil Beat, Inc.) ENFORCEMENT PRIORITY
7 8 9	SYSTEM) GENERAL COUNSEL'S REPORT
11	Under the Enforcement Priority System, the Commission uses formal scoring criteria as a
12	basis to allocate its resources and decide which matters to pursue. These criteria include, without
13	limitation, an assessment of the following factors: (1) the gravity of the alleged violation, taking
14	into account both the type of activity and the amount in violation; (2) the apparent impact the
15 .	alleged violation may have had on the electoral process; (3) the complexity of the legal issues
16	raised in the matter; and (4) recent trends in potential violations of the Federal Election
17	Campaign Act of 1971, as amended (the "Act"), and developments of the law. It is the
18	Commission's policy that pursuing relatively low-rated matters on the Enforcement docket
19	warrants the exercise of its prosecutorial discretion to dismiss cases under certain circumstances
20	or to find no reason to believe the Act has been violated.
21	The Office of General Counsel has scored MUR 7431 as a low-rated matter and has
22	determined that it should not be referred to the Alternative Dispute Resolution Office. For the
23	reasons set forth below, we recommend that the Commission find no reason to believe that

Honolulu Civil Beat, Inc.² violated the Act or Commission regulations.

The EPS rating information is as follows: . Complaint Filed: July 17, 2018. Response Filed: August 2, 2018.

Honolulu Civil Beat is a non-profit online newspaper. Compl. at 1 (July 17, 2018); Honolulu Civil Beat: About Us, available at https://www.civilbeat.org/about/ (last visited September 4, 2018).

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any political party, political committee, or candidate.⁵

1 The Complaint alleges that Honolulu Civil Beat made an in-kind contribution by

- 2 publishing one Senate candidate's answers to the newspaper's questions about political issues
- 3 before it published the answers from another nine candidates, including the Complainant.³
- 4 Honolulu Civil Beat responds that it is a non-profit online newspaper and is covered by the
- 5 media exemption.4

The Act and Commission regulations exclude from the definitions of "contribution" and "expenditure" the cost incurred in covering or carrying a news story, commentary, or editorial by any broadcasting station, newspaper, Web site, magazine, or other periodical publication, including any Internet or electronic publication, unless such facilities are owned or controlled by

The available information shows, and Complainant admits, that Honolulu Civil Beat regularly publishes news stories and there is no information to suggest that it is owned or operated by a political party, political committee, or candidate. It appears that when Honolulu Civil Beat published the candidates' answers, it was operating within its legitimate press

Compl. at 1-2.

Resp. at 1 (Aug. 2, 2018). It further explains that it asked approximately 275 candidates running for office in Hawaii to fill out questionnaires, and publishes approximately six each day so that readers are not overwhelmed by the number of articles posted on a single day. *Id.*

^{5 52} U.S.C. § 30101(9)(B)(i); see also 11 C.F.R. §§ 100.73 (excluding bona fide news coverage from the definition of "contribution"); 100.132 (same as to the definition of "expenditure"). The Commission uses a two-step analysis to determine whether the media exemption applies. First, the Commission considers whether the entity in question is a media entity, focusing on whether the entity produces, on a regular basis, a program that disseminates news stories, editorials, and/or commentary. Factual and Legal Analysis at 5-6, MUR 7206 (Bonneville International Corp., et al.) ("Bonneville F&LA"); Advisory Op. 2016-01 (Ethiq) at 2 ("AO 2016-01"); Advisory Op. 2010-08 (Citizens United) at 2 ("AO 2010-08"). Second, the Commission considers two factors in determining the scope of the exemption: (1) whether the press entity is owned or controlled by a political party, political committee, or candidate; and, if not, (2) whether the media entity is acting as a media entity in conducting the activity at issue (i.e., whether the entity is acting in its "legitimate press function"). Bonneville F&LA at 5; AO 2016-01 at 3; AO 2010-08; AO 2010-08 at 3. With respect to the second factor, when determining whether an entity is engaging in a legitimate media function, the Commission examines (1) whether the entity's materials are available to the general public; and (2) whether they are comparable in form to those ordinarily issued by the entity. Bonneville F&LA at 6-7; AO 2016-01 at 3; AO 2010-08 at 6.

occurred.

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function. Therefore, Honolulu Civil Beat's activities in this matter fall within the media
exemption, and we recommend that the Commission find no reason to believe a violation

RECOMMENDATIONS

- 1. Find no reason to believe that Honolulu Civil Beat, Inc. violated the Act and Commission regulations;
- 2. Approve the attached Factual and Legal Analysis and the appropriate letters; and
- 3. Close the file as to all respondents.

Lisa J. Stevenson Acting General Counsel

Kathleen M. Guith Associate General Counsel

9.17.18 Date

BY:

Stephen Gura

Deputy Associate General Counsel

Jeff S. Jordan

Attorney

Assistant General Counsel

Kristina M. Portner

Attachment:

Factual and Legal Analysis

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

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RESPONDENTS:

Honolulu Civil Beat, Inc.

MUR 7431

This matter was generated by a Complaint alleging violations of the Federal Election

Campaign Act of 1971, as amended ("the Act") and Commission regulations by Honolulu Civil

Beat, Inc. It was scored as a low-rated matter under the Enforcement Priority System, by which
the Commission uses formal scoring criteria as a basis to allocate its resources and decide which
matters to pursue.

The Complaint alleges that Honolulu Civil Beat made an in-kind contribution by publishing one Senate candidate's answers to the newspaper's questions about political issues before it published the answers from another nine candidates, including the Complainant. Honolulu Civil Beat responds that it is a non-profit online newspaper and is covered by the media exemption. ²

The Act and Commission regulations exclude from the definitions of "contribution" and "expenditure" the cost incurred in covering or carrying a news story, commentary, or editorial by any broadcasting station, newspaper, Web site, magazine, or other periodical publication, including any Internet or electronic publication, unless such facilities are owned or controlled by any political party, political committee, or candidate.³

Compl. at 1-2 (July 17, 2018).

Resp. at 1 (Aug. 2, 2018). It further explains that it asked approximately 275 candidates running for office in Hawaii to fill out questionnaires, and publishes approximately six each day so that readers are not overwhelmed by the number of articles posted on a single day. *Id*.

⁵² U.S.C. § 30101(9)(B)(i); see also 11 C.F.R. §§ 100.73 (excluding bona fide news coverage from the definition of "contribution"); 100.132 (same as to the definition of "expenditure"). The Commission uses a two-step analysis to determine whether the media exemption applies. First, the Commission considers whether the entity in question is a media entity, focusing on whether the entity produces, on a regular basis, a program that disseminates news stories, editorials, and/or commentary. Factual and Legal Analysis at 5-6, MUR 7206 (Bonneville International Corp., et al.) ("Bonneville F&LA"); Advisory Op. 2016-01 (Ethiq) at 2 ("AO 2016-01"); Advisory Op.

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- 1 The available information shows, and Complainant admits, that Honolulu Civil Beat
- 2 regularly publishes news stories and there is no information to suggest that it is owned or
- 3 operated by a political party, political committee, or candidate. It appears that when Honolulu
- 4 Civil Beat published the candidates' answers, it was operating within its legitimate press
- 5 function. Therefore, the Commission finds no reason to believe that Honolulu Civil Beat, Inc.
- 6 violated the Act and Commission regulations.

2010-08 (Citizens United) at 2 ("AO 2010-08"). Second, the Commission considers two factors in determining the scope of the exemption: (1) whether the press entity is owned or controlled by a political party, political committee, or candidate; and, if not, (2) whether the media entity is acting as a media entity in conducting the activity at issue (i.e., whether the entity is acting in its "legitimate press function"). Bonneville F&LA at 5; AO 2016-01 at 3; AO 2010-08; AO 2010-08 at 3. With respect to the second factor, when determining whether an entity is engaging in a legitimate media function, the Commission examines (1) whether the entity's materials are available to the general public; and (2) whether they are comparable in form to those ordinarily issued by the entity. Bonneville F&LA at 6-7; AO 2016-01 at 3; AO 2010-08 at 6.